

Redacted Version of Document Sought to be Sealed

Mark C. Mao, CA Bar No. 236165
 Beko Reblitz-Richardson, CA Bar No. 238027
 Erika Nyborg-Burch (admitted *pro hac vice*)
BOIES SCHILLER FLEXNER LLP
 44 Montgomery St., 41st Floor
 San Francisco, CA 94104
 Tel.: (415) 293-6800
 mmao@bsflfp.com
 brichardson@bsflfp.com
 enyborg-burch@bsflfp.com

James Lee (admitted *pro hac vice*)
 Rossana Baeza (admitted *pro hac vice*)
BOIES SCHILLER FLEXNER LLP
 100 SE 2nd St., 28th Floor
 Miami, FL 33131
 Tel.: (305) 539-8400
 jlee@bsflfp.com
 rbaeza@bsflfp.com

Amanda K. Bonn, CA Bar No. 270891
SUSMAN GODFREY L.L.P.
 1900 Avenue of the Stars, Suite 1400
 Los Angeles, CA 90067
 Tel: (310) 789-3100
 Fax: (310) 789-3150
 abonnn@susmangodfrey.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
 JEREMY DAVIS, CHRISTOPHER
 CASTILLO, and MONIQUE TRUJILLO
 individually and on behalf of all similarly
 situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

William Christopher Carmody
 (admitted *pro hac vice*)
 Shawn J. Rabin (admitted *pro hac vice*)
 Steven M. Shepard (admitted *pro hac vice*)
 Alexander Frawley (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
 1301 Avenue of the Americas,
 32nd Floor
 New York, NY 10019
 Tel.: (212) 336-8330
 bcarmody@susmangodfrey.com
 srabin@susmangodfrey.com
 ssh Shepard@susmangodfrey.com
 afrawley@susmangodfrey.com

John A. Yanchunis (admitted *pro hac vice*)
 Ryan J. McGee (admitted *pro hac vice*)
MORGAN & MORGAN
 201 N. Franklin Street, 7th Floor
 Tampa, FL 33602
 Tel.: (813) 223-5505
 jyanchunis@forthepeople.com
 mram@forthepeople.com
 rmcgee@forthepeople.com

Michael F. Ram, CA Bar No. 104805
MORGAN & MORGAN
 711 Van Ness Ave, Suite 500
 San Francisco, CA 94102
 Tel: (415) 358-6913
 mram@forthepeople.com

Case No.: 5:20-cv-03664-YGR-SVK

**DECLARATION OF MARK C. MAO IN
 SUPPORT OF PLAINTIFFS' RULE 15(a)
 MOTION FOR LEAVE TO AMEND**

The Honorable Yvonne Gonzalez Rogers
 Courtroom 1 - 4th Floor
 Date: March 15, 2022
 Time: 2:00 p.m.

DECLARATION OF MARK C. MAO

I, Mark C. Mao, declare as follows.

1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs in this matter. I am an attorney at law duly licensed to practice before all courts of the State of California. I have personal knowledge of the matters set forth herein and am competent to testify.

2. I submit this Declaration in support of Plaintiffs' Rule 15(a) Motion for Leave to File Their Proposed Third Amended Complaint.

3. Attached hereto as **Exhibit A** is Plaintiffs' proposed Third Amended Complaint.

4. Attached hereto as **Exhibit B** is a redline comparing Plaintiffs' Second Amended Complaint (Dkt. 136-1) with Plaintiffs' proposed Third Amended Complaint.

5. Plaintiffs sent their proposed Third Amended Complaint and a redline to Google on January 31. The parties met and conferred about the proposed amendment on February 1. On February 3, Google informed Plaintiffs that Google does not consent to the amendment.

6. Plaintiffs are seeking leave to amend to conform their class definitions with the evidence that Google has produced in discovery. When Plaintiffs previously amended their Complaint in April 2021, Plaintiffs did not yet have the full collection of non-public Google documents that form the basis of this amendment. When Google did finally begin producing documents in earnest (with a substantial completion date of October 6, 2021, Dkt. 242-1), Google produced documents confirming a variety of tracking and advertising code embedded in non-Google websites, which Google uses to collect users' private-browsing data.

7. Google cannot demonstrate any prejudice from Plaintiffs' proposed amendment. Plaintiffs have no plans to propound additional discovery on the basis of this amendment. Plaintiffs have already served their RFPs, and Plaintiffs have already served their forty allotted interrogatories and their seventy-five allotted Requests for Admissions. Plaintiffs have already sought dates for all 20 of their permitted depositions, including by allotting three slots for 30(b)(6) depositions. And Plaintiffs will not seek an extension of the discovery deadlines on the basis of this amendment. To the extent a modification of the discovery deadlines becomes necessary, it

1 will be for Google to complete already served discovery, including 30(b)(6) depositions and the
2 data productions being overseen by Special Master Brush—for which Google is already far behind
3 its production deadlines.

4 8. While Plaintiffs have no plans to serve new discovery based on this amendment,
5 Plaintiffs expect Google to properly comply with already served discovery requests. For example,
6 consistent with the 30(b)(6) notices they served on December 3, Plaintiffs reasonably seek 30(b)(6)
7 testimony relating to AdSense, Search ads revenues, and conversion tracking, among other topics.
8 Plaintiffs' basis for seeking this testimony is the documents that Google previously produced,
9 including Google's documents regarding Google's [REDACTED] financial analysis.

10 9. When the parties began discussing 30(b)(6) topics in December, Google for the first
11 time articulated its position that it would not produce a Rule 30(b)(6) witness concerning some of
12 its tracking and conversion technologies (such as AdSense) because it did not believe such
13 technologies were within the scope of Plaintiffs' class definition. Plaintiffs made clear to Google
14 during a meet-and-confer in December that, based on discovery already obtained, Plaintiffs
15 considered each of AdSense, conversion tracking, and Search ads revenues to fall within their
16 scope of their claims.

17 10. Google is objecting to Plaintiffs' request for this testimony, suggesting that portions of
18 the [REDACTED] analysis are out of scope. Google appears to believe that Search ads revenues
19 and AdSense are irrelevant, as Plaintiffs' claims center around data collected from users' visits to
20 non-Google websites and the class definition did not specifically mention AdSense. Google has
21 similarly objected to providing 30(b)(6) testimony on conversion tracking, which forms a
22 significant portion of Google's [REDACTED] analysis.

23 11. Attached hereto as **Exhibit 1** is a document Google produced in discovery labeled
24 GOOG-BRWN-00630517.

25 12. Attached hereto as **Exhibit 2** is a document Google produced in discovery labeled
26 GOOG-BRWN-00441285.

27 13. Attached hereto as **Exhibit 3** is a document Google produced in discovery labeled
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1 GOOG-BRWN-00475063.

2 14. Attached hereto as **Exhibit 4** is a document Google produced in discovery labeled
3 GOOG-CABR-03827263.

4 15. Attached hereto as **Exhibit 5** is a document Google produced in discovery labeled
5 GOOG-BRWN-00406065.

6 16. Attached hereto as **Exhibit 6** are excerpts of a document Google produced in discovery
7 labeled GOOG-BRWN-00686207.

8 17. Attached hereto as **Exhibit 7** is a document Google produced in discovery labeled
9 GOOG-BRWN-00457255.

10 18. Attached hereto as **Exhibit 8** is a document Google produced in discovery labeled
11 GOOG-BRWN-00042388.

12 19. . Attached hereto as **Exhibit 9** is a document Google produced in discovery labeled
13 GOOG-BRWN-00140297.

14 20. Attached hereto as **Exhibit 10** is a document Google produced in discovery labeled
15 GOOG-CABR-04324934.

16 21. Attached hereto as **Exhibit 11** is a document Google produced in discovery labeled
17 GOOG-BRWN-00393432.

18 22. Attached hereto as **Exhibit 12** is a document Google produced in discovery labeled
19 GOOG-CABR-03750737.

20 23. Attached hereto as **Exhibit 13** is a document Google produced in discovery labeled
21 GOOG-CABR-04981563.

22 24. Attached hereto as **Exhibit 14** is a document Google produced in discovery labeled
23 GOOG-BRWN-00806426.

24 25. Attached hereto as **Exhibit 15** is a document Google produced in discovery labeled
25 GOOG-BRWN-00804212.

26 26. Attached hereto as **Exhibit 16** is a document Google produced in discovery labeled
27 GOOG-CABR-03923580.

28

1 27. Attached hereto as **Exhibit 17** is a document Google produced in discovery labeled
2 GOOG-BRWN-00153850.C

3 28. Attached hereto as **Exhibit 18** is a document Google produced in discovery labeled
4 GOOG-BRWN-00048967.C.

5 29. Attached hereto as **Exhibit 19** is a document Google produced in discovery labeled
6 GOOG-CABR-04668451.

7 30. Attached hereto as **Exhibit 20** is a document Google produced in discovery labeled
8 GOOG-CABR-04739841.

9 31. Attached hereto as **Exhibit 21** is a document Google produced in discovery labeled
10 GOOG-BRWN-00409986.

11 32. Attached hereto as **Exhibit 22** is a document Google produced in discovery labeled
12 GOOG-BRWN-00477510.

13 33. Attached hereto as **Exhibit 23** is a document Google produced in discovery labeled
14 GOOG-BRWN-00388293.

15 34. Attached hereto as **Exhibit 24** is a document Google produced in discovery labeled
16 GOOG-CABR-05126022.

17 35. Attached hereto as **Exhibit 25** are excerpts of a document Google produced in
18 discovery labeled GOOG-CABR-05269357.R.

19 36. Attached hereto as **Exhibit 26** are excerpts of a document Google produced in
20 discovery labeled GOOG-CABR-05756666.

21 37. Attached hereto as **Exhibit 27** is a document Google produced in discovery labeled
22 GOOG-BRWN-00394965.

23 38. Attached hereto as **Exhibit 28** is a document Google produced in discovery labeled
24 GOOG-CABR-04967959.

25 39. Attached hereto as **Exhibit 29** is a document Google produced in discovery labeled
26 GOOG-BRWN-00750077.

27 40. Attached hereto as **Exhibit 30** is a document Google produced in discovery labeled
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1 GOOG-BRWN-00601022.

2 41. Attached hereto as **Exhibit 31** is a document Google produced in discovery labeled
3 GOOG-BRWN-00529122.

4 42. Attached hereto as **Exhibit 32** are excerpts from the transcript of the deposition of
5 Michael Kleber.

6 43. Attached hereto as **Exhibit 33** are excerpts from the transcript of the deposition of
7 Justin Schuh.

8 44. Attached hereto as **Exhibit 34** is a document Google produced in discovery labeled
9 GOOG-BRWN-00397243.

10 45. Attached hereto as **Exhibit 35** are excerpts from a document Google produced in
11 discovery labeled GOOG-CABR-04588763.

12 46. Attached hereto as **Exhibit 36** are excerpts from a document Google produced in
13 discovery labeled GOOG-BRWN-00490767.

14 47. Attached hereto as **Exhibit 37** is a document Google produced in discovery labeled
15 GOOG-CABR-04787255.

16 48. Attached hereto as **Exhibit 38** is a document Google produced in discovery labeled
17 GOOG-CABR-03738741.

18 49. Attached hereto as **Exhibit 39** is a document Google produced in discovery labeled
19 GOOG-CABR-00903677.

20 50. Attached hereto as **Exhibit 40** is a document Google produced in discovery labeled
21 GOOG-CABR-00547295.

22 51. Attached hereto as **Exhibit 41** is a document Google produced in discovery labeled
23 GOOG-CABR-04076770.

24 52. Attached hereto as **Exhibit 42** are excerpts from a document Google produced in
25 discovery labeled GOOG-CABR-00543864.

26 53. Attached hereto as **Exhibit 43** is an excerpt from Google's Responses and Objections
27 to Plaintiffs' Eighth Set of Interrogatories (Nos. 30-33).
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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed this 3rd day of February, 2022, at San Francisco, California.

3 /s/ Mark C. Mao
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